

In the Matter of License No. 212191 Merchant Mariner's Document No.
Z-241770 and all other Seaman Documents
Issued to: James L. Hughes

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1400

James L. Hughes

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 20 July 1962, an Examiner of the United States Coast Guard at Galveston, Texas suspended Appellant's seaman documents for three months upon finding him guilty of negligence. The specification found proved alleges that while serving as Master and Pilot on board a ferryboat of the State of Texas, the MV E.H. THORNTON JR., under authority of the license above described, on 9 March 1962, Appellant wrongfully failed to navigate the ferryboat with caution during conditions of fog and low visibility, thereby contributing to a collision between the ferryboat THORNTON and the United States SS ANNE QUINN in Galveston Channel, Texas, when Appellant was unable to stop his vessel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

Both parties introduced in evidence the testimony of witnesses and documentary exhibits. Appellant testified that the ferryboat had stopped and was struck by the bow of the other vessel.

FINDINGS OF FACT

On 9 March 1962, Appellant was serving as Master and Pilot on board the State of Texas MV E.H. THORNTON JR. and acting under the authority of his license when his vessel collided with the United States SS ANNE QUINN in the middle of Galveston Channel approximately one-half mile up the channel from Bolivar Roads. The collision occurred at 0718 in dense fog which limited visibility to between 150 and 200 feet. There were no personal injuries nor loss of life. Damage to the THORNTON amounted to \$40,000 and there was considerable less damage done to the ANNE QUINN.

The ferryboat THORNTON is owned and operated by the State of

Texas as a free passenger and vehicle service between Port Bolivar and Galveston, Texas. She is about 180 feet in length and 588 gross tons. The THORNTON is equipped with a propeller and wheelhouse at both ends. In each wheelhouse there are engine controls, located by the steering lever, and a radarscope. Her normal speed is approximately 12 knots (180 RPM). Although the THORNTON is not inspected by the United States Coast Guard, the State of Texas requires that her personnel have licenses or documents issued by the Coast Guard.

At 0700 on 9 March, the THORNTON departed Port Bolivar, with 87 passengers and some vehicles on board, in fog which became increasingly dense as she crossed Bolivar Roads to enter the 1200-foot wide Galveston Channel on a westerly course. The Liberty ship ANNE QUINN departed Galveston fully loaded at 0624 and headed for the sea on easterly courses. The collision occurred in the vicinity of the dredge BURLINGTON which was operating about 450 feet from the south edge of the channel, heading in a westerly direction, with an anchor buoy about 200 feet abeam on each side and her pipe line running aft parallel to the channel and then south to Galveston Island. This dredging operation required vessels to pass to the north of the BURLINGTON. The presence of the dredge was known to Appellant and the pilot of the ANNE QUINN.

Both the ferryboat and the Liberty ship were sounding fog signals and had a lookout on the bow. There was a flood tide with westerly current of approximately 1 1/2 knots. Appellant was in the forward wheelhouse of the THORNTON operating the engine controls and the steering lever. There was a lookout in the wheelhouse and another deckhand observing the radarscope. Although the radar was in good operating condition, the image of the ANNE QUINN was not represented as a separate vessel on the radarscope but was merged in a single pip with the dredge BURLINGTON and her pipe line by the time the deckhand observing the radarscope took note of the latter vessel.

The ANNE QUINN, without radar, approached to pass the dredge making about one knot over the ground, against the current, with her engines set at dead slow ahead after the engines had been stopped for several minutes before sighting the dredge BURLINGTON. There was an exchange of two blast signals just before the ANNE QUINN started to pass very slowly about 100 feet to the north of the dredge and her starboard anchor buoy. About this time a fog signal from the THORNTON was heard and the ANNE QUINN's engines were stopped. Seconds later, her engines were ordered full astern when the ferryboat came into view. Less than a minute later, the port anchor of the ANNE QUINN was dropped at approximately the time of the collision and by then the forward progress of the Liberty ship had been stopped.

About a half mile from the point of collision, Appellant had stopped the ferryboat THORNTON because of a pilot boat. Later, he again stopped the THORNTON due to the presence of a fishing vessel and in order to adjust his vessel's course to starboard as a result of the radar indication that the ferryboat was too close to the pipe line astern of the dredge. Appellant then ordered to 80 to 90 RPM (5 to 6 knots) as the THORNTON maneuvered to pass to the north of the dredge without an exchange of signals with the dredge. When the ANNE QUINN was sighted dead ahead, Appellant ordered the engines full speed astern, moved the steering lever to place the rudder hard left and sounded the danger signal. The vessels collided almost head on with the THORNTON angling slightly across the bow of the ANNE QUINN from the latter's port to starboard side. After both vessels had stopped, they proceeded under their own power.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

Point I. The Coast Guard has no jurisdiction in this matter because no Federal law required a licensed master or pilot on the THORNTON. Therefore, Appellant was not "acting under the authority of his license", as required by 46 U. S. Code 239, despite the State of Texas requirement that the pilot have a license issued by the Coast Guard as a condition of employment. Jurisdiction cannot be conferred on a Federal agency by a State or by a contract between private parties.

Point II. Jurisdiction cannot be based alternatively on the "violation of a regulation" under Title 56 of the Revised Statutes since appellant was not charged with this but with "negligence".

Point III. The Examiner erred in finding Appellant guilty of "misconduct."

Point IV. The alleged negligence was not proved by substantial evidence.

Point V. The order is excessive and punitive rather than remedial. The three months' suspension was influenced by the erroneous finding that there was \$40,000 damage to the THORNTON instead of about \$3,000.

In conclusion, Appellant prays that the order be set aside for

lack of jurisdiction or lack of substantial evidence; alternatively, that it is modified to a probationary suspension in view of Appellant's prior good record and the nature of the evidence.

APPEARANCE: Frank R. Booth, Esquire, Assistant Attorney General, State of Texas.

OPINION

Point I

It is my opinion that the Coast Guard does have jurisdiction to suspend Applicant's license and that the matter under consideration does not come within the category of cases such as N.L.R.B. v. General Motors Corp. (C.C.A. 7, 1940) 116 F. 2d 306 and American Airlines v. Air Line Pilots Ass'n. (D.C., E.D. N.Y., 1950) 91 F Supp. 629 which state that the jurisdiction of administrative agencies is established by statute and it is not affected by agreements between private parties to extend or restrict the jurisdiction although agencies have discretionary power with respect to the exercise of jurisdiction in certain cases N.L.R.B. v. Walt Disney Productions (C.C.A. 9, 1945) 146 F 2d 44. The extent of the Coast Guard's jurisdiction in these proceedings depends upon the meaning of the words "acting under the authority of his license (or other document)" in 46 U.S. Code 239(d) except where an act in violation of a provision of Title 52 of the Revised Statutes or a regulation thereunder is involved.

Title 46 U.S. Code 239 (R.S. 4450, as amended) is a remedial statute and, therefore, it should be liberally construed to resolve all reasonable doubts as to its meaning in favor of the applicability of the statute to cases within the spirit or reason of the law, and the application is not limited to the documents of seamen serving on vessels of the United States. Commandant's Appeal Decision No. 1131. See also the decision by the Solicitor of the Treasury Department in the case of Captain Stillings (3 Treasury Decisions 12, 1900) which states, at page 14, that R.S. 4450 should be "given a liberal interpretation in the interest of public safety" and it "should be construed in such manner that it may, as far as possible, attain the end proposed". With this in mind and also considering the statutory duties of the Coast Guard to promote the safety of life and property at sea as well as to issue licenses and other documents indicating that persons have the qualifications to serve as seamen in various capacities, it is logical to conclude that Congress intended the jurisdictional limitation of "acting under authority" only for the purpose of precluding action in cases of negligence, misconduct and incompetence which are totally unrelated to a seaman's profession

rather than intending the right to suspend or revoke a seaman's documents should exist only in those cases where a document is required by Federal law or regulation. Under the former concept, a seaman is considered to be "acting under the authority of his license" when he performs functions related to his status as a seaman. Whether or not these words are read to modify the references in 46 U.S. Code 239(d) to acts in violation of the provisions of Title 52 of the Revised Statutes is immaterial since such acts would necessarily be related to the person's status as a seaman because Title 52 pertains to the regulation of various types of vessels.

This interpretation is consistent with opinions of two Attorney Generals in which it was stated that individuals' licenses were subject to the provisions of R.S. 4450 for alteration of a license (19 Op. Atty. Gen. 449 (1890)) and for refusing to answer questions during a ship-casualty investigation (24 Op. Atty. Gen. 136 (1902)). Although these two cases were decided before the amendment of R.S. 4450 in 1936, they indicate a general policy supporting the interpretation stated herein since they maintain that persons were "acting under authority" of their licenses under factual circumstances far weaker than those in this case. Hence, jurisdiction includes, but is not limited to, any case where a seaman is hired to do a job within the scope of his profession.

As a matter of discretion, the Coast Guard has limited by regulation the cases where action will be taken, against seamen employed on ships, to those instances where a license or other document is required by Federal law, regulation, or the employer (46 C.F.R. 137.01-35). This is simply an administrative determination that the Coast Guard will not take action, where the employer is not required to hire a documented or licensed seamen, except when the employer places reliance on the fact that a seaman has a document issued by the Coast Guard indicating that he is qualified to serve as a seaman in a certain capacity. See Commandant's Appeal Decision Nos. 1077 and 1366.

This interpretation is far from the proposition advanced on appeal that this case constitutes an attempted extension of the statutory jurisdiction on the basis of an agreement or understanding between the parties that Appellant was required to have a license as a condition of employment on the THORNTON. Nevertheless, it has been the consistent policy to take action in cases where a seaman's document is required as a condition of employment. Commandant's Appeal Decisions Nos. 491, 700, 824, 1030, 1281.

Point II

This jurisdictional argument is not material since it has been determined that Appellant was acting under the authority of his license.

Point III

The Examiner stated, in his decision, that a Master who fails to use the radar properly is not only negligent but is guilty of misconduct. I agree that this was an error by the Examiner if it was intended to mean that Appellant was being found guilty of "misconduct" as a separate charge even though "negligence" was the only specific charge which Appellant was given notice to defend against.

Point IV

The contention that the alleged negligence was not proved is not supported by any discussion or details on which this claim is based.

It is not disputed that the collision occurred approximately in the center of the channel. Hence, the ANNE QUINN was well within her half of the usable portion of the channel since all traffic was required to pass to the north of the dredge. The Liberty ship had exchanged passing signals with the dredge BURLINGTON as required by Pilot Rule 80.26 and the THORNTON had not. Despite the testimony of Appellant's witnesses to the contrary, the Examiner accepted the testimony of the ANNE QUINN's pilot and of the levermen of the dredge, a disinterested witness, that the ANNE QUINN was sounding fog signals and she was proceeding so slowly for some time prior to the collision that she was practically stopped (R. 48, 66), whereas the THORNTON was "moving pretty fast" (R. 67).

Regardless of the advantage of the THORNTON with respect to stopping ability as compared with the fully loaded ANNE QUINN, it is my opinion that, under the existing circumstances, Appellant was required to exercise extreme caution concerning the speed of the THORNTON as she approached the dredge and Appellant did not exercise the degree of caution required. In addition to the facts that the THORNTON was not on her right-hand side of the usable portion of the channel and did not exchange passing signals with the dredge, Appellant was navigating the THORNTON at a speed greater than bare steerageway in visibility limited to between 150 and 200 feet. The courts generally state that the public necessities require ferryboats to continue operating in thick fogs and they may navigate at bare steerageway if they proceed cautiously. Commandant's Appeal Decision No. 1349. The record in this case indicates that the THORNTON was proceeding at about 5

knots through the water with a current of 1 1/2 knots increasing her speed over the ground. Moreover her navigation by Appellant was not otherwise cautious. Therefore, I conclude that Appellant was negligent as alleged.

Point V

The three months' suspension is not considered to be excessive. Concerning the amount of damage to the THORNTON, the manager of the ferryboats testified that it was "exactly \$40,000" (R. 24).

The order of the Examiner dated at Galveston, Texas on 20 July 1962, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 5th day of July, 1963.